IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **FAO No.382 of 1987**

DATE OF DECISION: November 1, 2006

DES RAJ AND OTHER ...APPELLANT

VERSUS

SEWA SINGH AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. ASHOK JINDAL, ADVOCATE FOR THE APPELLANTS.
MR. G.S. VIRK, ADVOCATE FOR RESPONDENT NO.2.
MR. DEEPAK SURI, ADVOCATE FOR THE INSURANCE COMPANY.

ASHUTOSH MOHUNTA, J. (ORAL)

This judgement shall dispose of FAO No.382 of 1987, FAO No.138 of 1987 & FAO No.139 of 1987. The facts are being taken from FAO No.382 of 1997 which has been filed by the claimants.

The claimants have filed the present appeal against the judgement of Motor Accident Claims Tribunal, Bhatinda (for short 'the Tribunal') dated 9.12.1986, by which a compensation of Rs.72,000/- was awarded to them on account of death of Jagdish Rai.

Briefly, the facts of the case are that on 27.7.1985, at about 12.45/1.00 P.M. Jagdish Rai was sitting on the pillion seat of a Rajdoot Motorcycle which was being driven by Damodar Singh. He was coming from the side of village Joga towards Mansa and when the motorcycle reached near village Tamkoot on the Mansa-Joga road, a bus bearing No.PUG 3685 being driver by Sewa Singh which was owned by M/s Bharat Motors (Regd.) Mansa, came at a fast speed and struck against the

motorcycle, as a result of which both the persons on the motorcycle fell down and received injuries. While being taken to the hospital, Jagdish Rai @ Bhola succumbed to his injuries. The accident is alleged to have been witnessed by Janak Raj and Hem Raj who were passing-by at the time of the accident. An FIR No.223 dated 27.7.1985 was registered against Sewa Singh, the driver of the offending vehicle under Section 304-A IPC. The claimants have claimed compensation of Rs.2 lacs on account of death of the deceased. The injured Damodar Singh has also claimed a compensation of Rs.1 lac.

The driver and the owner of the bus filed a joint written statement wherein the factum of accident was admitted by them. It was, however, averred that as the driver of the motorcycle did not know driving hence the accident occurred. It is stated that the moment the horn was blown by the driver of the bus, the driver of the motorcycle became nervous and instead of driving on the left hand side of the road drove the motorcycle towards the pits and the motorcycle fell in deep pits resulting in the death of Jagdish Rai and injuries to Damodar Singh. It is further averred that the bus in question was comprehensively insured with the New India Assurance Company Ltd., which is liable to pay the entire compensation awarded. Separate written statement was filed by the insurer wherein it was averred that the liability of the insurance company was limited to the extent of Rs.50,000/- only in each case. It was admitted that Bharat Motors (Regd.) Mansa is the insured owner of the bus.

The first question that is to be determined is whether the accident took place due to rash and negligent driving by the driver of the bus. The claimants examined AW-4 Janak Raj who has stated that on

27.7.1985, he alongwith Hem Raj was going from Mansa towards village Joga on a motorcycle. When they reached near Tamkoot Bus Stand and had just crossed the same by about one furlong, a motorcycle coming from the opposite direction which was being driven by Damodar Singh with Jagdish Rai as its pillion rider was struck by a bus bearing No.PUG 3685. It was stated that the bus was being driven at a high speed at around 90 Kms. per hour and the offending vehicle was being driven in a rash and negligent manner. It was further stated that even after striking the motorcycle on which Jagdish Rai was sitting, the bus stopped after a considerable distance of about a furlong. Apart from the above, AW-5 Damodar Singh has also appeared as a witness. He was injured in the accident and has given a detailed account of the manner in which the accident took place. The aforementioned statements have duly been corroborated by AW-3, Inderjeet Singh who recorded the FIR AW-3/A. A perusal of the testimonies of the witnesses i.e., Janak Raj and Damodar Singh who was the injured clearly show that the accident took place because of the rash and negligent driving of the driver of the bus.

Mr. Jindal, counsel for the claimants has argued that the compensation awarded to the claimants on account of death of Jagdish Rai is highly inadequate, as the deceased was a young man of 22/23 years of age and was matriculate. The matriculation certificate Ex.AX has been placed on record. It has been averred that the deceased was earning a sum of Rs.1200/- per month at the time of his death. The deceased is alleged to have been working in the sale and purchase of diesel engines. He was unmarried and was the only earning member of the family. He was survived by his father who was 55 years of age and mother who was 45 years of age.

In order to prove the income of the deceased, AW-7 Ramji Dass has stated that the deceased Jagdish Rai was previously employed with the firm M/s Khetu Ram and Co., Mansa and was earning Rs.400/- per month. He has also stated that at the time when he left their shop he was also paid commission in addition to his salary. In the testimony of AW-6, father of the claimant it has come that the deceased was a partner of M/s Jagdish Rai and Company which was formed w.e.f. 1.4.1985, and that he was earning Rs.1200/- per month.

There is no rebuttal to the evidence led on behalf of the claimants hence I take the income of the deceased to Rs.1200/-per month. If 1/3rd of the amount is deducted as personal expenses then the dependency of the claimants comes to Rs.800/- per month i.e. Rs.9600/- per annum. As the deceased was a young man of 22/23 years of age, therefore, it would be appropriate if a multiplier of 16 is applied. Thus, the claimants are held entitled to a compensation of Rs.1,53,600/-. Apart from the above, the claimants are also held entitled to a sum of Rs.5000/- on account of funeral expenses. Therefore, I award a sum of Rs.1,58,600/- as compensation to the claimants on account of death of Jagdish Rai.

The last question that arise for consideration in the present case is whether the insurance company is liable to pay the entire amount of compensation to the claimants or is their liability is limited to Rs.50,000/- only.

Mr. Suri, counsel for the insurance company has vehemently argued that a perusal of the insurance policy would show that although the vehicle was comprehensively insured but their liability is limited to Rs.50,000/- only, thus, the findings of the Tribunal are liable to be set aside.

It is contended that no additional premium for Third Party Unlimited Liability was paid by the insured and therefore, the insurance company is limited to the liability of Rs.50,000/- only. He has relied on the statement of RW-1 Jawahar Singh, Assistant Divisional Manager, New India Assurance Company Ltd., who has stated that the liability of the company was limited to Rs.50,000/- only.

This contention of the counsel for the insurance company has vehemently been opposed by the counsel for the owner as well as the driver of the offending vehicle, who has vehemently argued that the offending vehicle was comprehensively insured with the Insurance Company. He has relied on the insurance policy Ex.R-2 and has stated that premium in the column of 'Liability to Public Risk' was also paid by the insured. He has strongly relied on the fact that the vehicle was comprehensively insured.

After perusing the insurance policy, it is clear that the bus involved in the accident was comprehensively insured and extra premium for Third Party Risk was charged by the insurance company. Thus, the insurance company is held liable to indemnify the owner and the driver of the offending vehicle. Accordingly, the findings of the Tribunal on issue No.3 are upheld. In view of the aforementioned findings, I award a sum of Rs.1,58,600/- to the claimants alongwith interest at the rate of 9% per annum from the date of application till the date of payment. As the vehicle was comprehensively insured, therefore, the entire amount shall be paid to the claimants by the insurance company.

The appeal stands partly allowed in the above terms.

November 1, 2006 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**